JD–114-04
North Haven, CT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

W. B. MASON COMPANY, INC.

and 34-CA-10551
34-CA-10600

LOCAL 371, UNITED FOOD & COMMERCIAL
WORKERS UNION, AFL-CIO, CLC

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For the General Counsel

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Adam C. Wit, Esq.,
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For the Respondent

DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Hartford, Connecticut on July 14, 2004. The charge in case number 34-CA-10551 was filed by Local 371, United Food & Commercial Workers Union (Union) on July 21, 2003, and an amended charge was filed in this case on November 21, 2003. The charge in case number 34-CA-10600 was filed by the Union on September 28, 2003, and an amended charge was filed on November 21, 2003.[1] An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) was issued by Region 34 on November 24. The Complaint alleges that W. B. Mason Company, Inc. (Mason or Respondent) violated the National Labor Relations Act (Act) by failing and refusing to bargain in good faith with the Union and by withdrawing recognition from the Union in violation of Sections 8(a)(1) and (5) of the Act. In its Answer to the Complaint, Respondent admits, inter alia, the jurisdictional allegations of the Complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation, engages in supplying and delivering office supplies,

[1] All dates are in 2003 unless otherwise indicated.

furniture and related products from at its facility in North Haven, Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background and Issues for Determination

W. B. Mason Company, Inc., sells and delivers office supplies, furniture and related products from twelve facilities located in eight states in the Northeast U.S. All of its facilities had been non-union until August 12, 2002, when the Union was certified as the exclusive collective-bargaining representative of the Respondent's employees employed in its North Haven, Connecticut facility, in the following Unit:

> All fulltime and regular part-time drivers and warehouse employees employed by Respondent at the North Haven facility, but excluding office clerical employees, customer service representatives, and guard2, professional employees and supervisors as defined in the Act.

The Complaint alleges that Respondent met with the Union at various times between October 15, 2002 and June 18, 2003 for the purpose of negotiating an initial collective bargaining agreement. It further alleges that since about mid-January 2003, in the course of these negotiations, Respondent refused to meet with the Union more than once a month, refused to meet on consecutive days within a month, cancelled bargaining sessions and by its overall conduct, refused to timely schedule negotiation sessions. On or about August 15, Respondent withdrew recognition from the Union.[2] Since on or about August 15, The Respondent has failed and refused to bargain collectively with the Union. By its conduct as alleged in this paragraph, Respondent is alleged to have violated Section 8(a)(1) and (5) of the Act.

Respondent admitted that at all material times, the following named individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

David Jaffe	Branch Manager
Frank Amarault	Distribution Manager
Carl Champney	Supervisor
Richard Candido	Supervisor
Brian Southworth	Supervisor
Jose Rodriquez	Supervisor

B. Discussion and Conclusions on the Allegations of Failure to Bargain in Good Faith

[2] The Complaint alleges this date to be August 18, but the parties stipulated at hearing that the correct date was August 15.

By letter dated August 28, 2002, the Union gave notice to Respondent that it was prepared to enter into contract negotiations. The letter names the employees on the negotiating committee and requests certain information. [3] Respondent, by its independent labor counsel, Frederick Schwartz, replied with a letter dated September 6, 2002. In the letter Schwartz provided some of the information requested and suggested that a date be set for the initial bargaining session.

A few weeks later, in a telephone conversation between Schwartz and Union President Brian Petronella, October 15, 2002, was fixed as the date for the first session. On September 27, 2002, Brian Petronella wrote Schwartz and confirmed that October 15 would be the first session. He also noted he was available to negotiate on October 16 and 17. Schwartz responded by letter dated September 30, 2002. He stated in the letter that he was unavailable for October 16 and 17 and suggested the next session be held on November 20, 2002. The next correspondence from the Union relating to dates for negotiations was sent in May 2003.

At the October 15, 2002, session, Schwartz was the primary spokesman for the Respondent and for the primary negotiators for the Union were Brian Petronella and Union Representative Ron Petronella. The parties exchanged some information about themselves and the Union gave Respondent its initial contract proposal, absent economic and health insurance proposals. Schwartz testified that at this meeting the parties discussed meeting on consecutive days or on weekends. Because the employee representatives on the bargaining committee could not meet during the day, negotiations were to take place in the evening. Schwartz was from Chicago and expressed concerns that if the parties met on consecutive days during the week, he would just have to sit around a hotel room during the day which was a waste of time. He was amenable to meeting on weekends, but would need as much advance notice as possible. Respondent's Branch Manager David Jaffe was present for this meeting and corroborated Schwartz's testimony. Jaffe testified that this was the only time during any bargaining session the matter of meeting on consecutive days or on weekends came up.

According to Schwartz, Brian Petronella stated that they would just go forward and see how they progressed. Ron Petronella stated that if the parties reached a deadline they might have to meet more than once a month. The first meeting ended after an hour. The parties agreed to meet again on November 20, 2002.

At the second session the Respondent gave the Union its proposals. Following this session, Petronella wrote the Union's members at Respondent noting, inter alia, that there had been two bargaining sessions and that two more were scheduled in December and January 2003.

On November 15, 2002, Schwartz wrote to Brian Petronella announcing certain Company-wide enhancements and noted that if Petronella had any questions to let him know.

At the second bargaining session on November 20, 2002, Schwartz asked the Union for its economic proposal. The Union stated that one would be given to him as soon as the Union could formulate one. The Company gave the Union its counterproposals at this meeting. This meeting ended after two and a half hours. The parties scheduled a December and January

[3] Throughout negotiations, Respondent was asked to provide information and complied with those requests in a reasonably timely manner.

meeting. At both the December and January sessions, Respondent asked that the Union provide a wage proposal.

Thomas Wilkinson is Secretary-Treasurer of Local 371 and reports to the Union's President, Brian Petronella. In various positions with the Union over almost 30 years, Wilkinson has negotiated approximately 20 collective bargaining agreements. He joined the negotiating team at the third negotiating session held December 10, 2002. He replaced Brian Petronella as the lead negotiator for the Union.

The next bargaining session was held on January 15. Wilkinson testified generally that the Union was requesting more than one meeting a month. On cross-examination, he testified that he made this request in the January 15 bargaining session.[4] He further testified that Schwartz stated at some point that he could not meet more than once a month, hesitantly fixing this date as December 10. Schwartz denied both of these assertions by Wilkinson.[5] He testified that at no point in the negotiating sessions did he say that Respondent would meet only once a month. Wilkinson did not put this request to meet on consecutive dates in writing until it was made in a letter dated May 12. I credit Schwartz testimony over that of Wilkinson with regard to the matter of requesting consecutive days for bargaining. I find that this matter was addressed in the first session on October 15, 2002 and was not raised again until Wilkinson's May 12 letter.

At the January 15 session, a meeting was scheduled for February. According to Wilkinson, Schwartz cancelled this scheduled meeting. Wilkinson was personally scheduled for vacation that week, but testified that another Union official would have taken his place had the meeting been held. The February meeting set for negotiations was cancelled because Schwartz' wife became gravely ill with cancer and he could not travel during her treatment. Another meeting was scheduled for March 18. Wilkinson testified that all of the negotiation sessions were productive to a point and the parties were moving forward. All of the points agreed on by the parties were typed and given to the Respondent. As of the March 18 meeting, there were still important issues not agreed to, including wages, health and welfare, pension, dues check off and drug testing. At this meeting the Respondent requested that the Union give it its full economic package. The Union responded that it was moving forward on the economic package but first wanted an agreement on dues check off. The Respondent's position was that it was opposed to dues check off. At the conclusion of the March meeting, the parties agreed that the next bargaining session would be held on April 15.

The April 15 meeting was cancelled. According to Wilkinson, he was not going to be able to attend this session because he was going on vacation, but that Brian Petronella would attend in his place. He also testified that, according to information given him by Petronella, Schwartz cancelled this meeting. Schwartz testified that he was about to leave his home to fly to Connecticut on April 15, when he received a call from his secretary saying that Ron Petronella wanted to cancel the meeting. Schwartz then called Petronella who told him he wanted to cancel the meeting because the parties were stuck on two issues. The first was the Union's

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[4] Nowhere in the notes of the negotiating session can be found mention of requests being made for meeting on consecutive days or weekends.

[5] Human Resources Manager Pruhenski attended the bargaining sessions beginning with the January 2003 meeting. She testified that at the meetings she attended the Union did not ask for meetings on consecutive days or weekends, or express frustration about how the meetings were scheduled. She further testified that she never heard Schwartz tell the Union that he would not meet more than once a month.

wage proposal, which was still not prepared, and the second was Respondent's refusal to move on dues check off. Schwartz testified that the Respondent did not want to get in the middle between the Union and its employee members over dues collection. There were also administrative costs associated with dues check off. The Respondent's position was that unless the Union agreed to pay those costs, there would be no dues check off.

In response to what Petronella told him, Schwartz encouraged the Union to present a wage proposal as soon as possible and also suggested a meeting between the Union's negotiators and one of Respondent's owners. Petronella was agreeable to the meeting proposal and Schwartz set up the meeting. Ron Petronella did not testify. I credit Schwartz's testimony over the hearsay testimony of Wilkinson on the issue of which party cancelled the April 15 meeting.

At the end of April, Wilkinson and some of the Union's bargaining team met with Schwartz and Tom Golden, one of the Respondent's owners. At this meeting the subject of dues check off was discussed. The Union's position was it was simply an administrative matter and best for everyone. According to Wilkinson, the Respondent took the position that it was a cost factor and that the Respondent was not a collection agent for the Union. The only reason for Respondent's opposition to dues check off shown in the notes of the negotiations is the cost factor. The meeting ended with no change in the parties' respective positions. At the next meeting Schwartz gave the Union figures on the specific costs associated with dues check off. However, in a private conversation on the day of the meeting with Golden, Wilkinson told Schwartz that the Union could not pay for the dues check off because then it would have to do so with other employers with whom the Union had contracts.

The Union sent a letter to Schwartz on May 12, asking for the first time in writing that the parties meet on more than one day a month, suggesting five specific dates, May 17, 18, 19, 20 and 21. According to Wilkinson, the purpose of the request was to speed the negotiations. The letter does not accuse the Respondent of dilatory tactics.

By letter dated May 16, Schwartz responded stating that he was unavailable on the dates suggested, but would be available on May 27. Schwartz was engaged on the other dates in contract negotiations in Saginaw Michigan for an expiring contract. Schwartz also sent the Union some amendments to its health insurance plan. As of this date, the Union had not made a proposal with respect to health insurance or economics. By letter dated May 19, Wilkinson accepted the May 27 date, and requested the parties also meet on May 28, 29, 30, and 31. Schwartz responded stating that he was unavailable between May 27 and June 18, which he suggested as the next date to meet.

On May 22, the Union held a meeting with its members employed by Respondent. Wilkinson testified that some of the members expressed frustration at the pace of negotiations. Prior to this meeting, on May 13, the union had filed an unfair labor practice charge with respect to the Respondent's position on dues check off. The Respondent filed a position paper and the Union withdrew the charge. The Union did not file a charge at this time alleging that the Respondent was engaging in dilatory conduct with respect to scheduling bargaining sessions.

The parties met on May 27 and by the end of the meeting it was clear that the remaining unresolved issues were insurance, pensions, wages, check off, sick leave and vacation. The Respondent gave the union a figure of $2.50 per employee per pay period for dues deduction. The Respondent asked again for an economic and health insurance proposal. According to

Schwartz, the Union replied that these proposals were not yet ready.

At the meeting held June 18 the Union gave the Respondent a comprehensive proposal in writing. Inter alia, it showed that quite a few of the contract provision had been agreed upon. It included for the first time in writing the wages the Union was seeking. The issues remaining to be resolved were check off, paid time off, health insurance, pension and wages. Schwartz stated at this meeting that he would take the Union wage proposal to his client and get back with the Union the following week. The Respondent also stated at this meeting that it would stick with its existing 401K plan and would not participate in the Union's pension plan. At this meeting, in the absence of a union health insurance proposal, Schwartz told the Union that in all likelihood, the Respondent would like to stay with its existing health insurance plan. At the conclusion of this meeting, Wilkinson remembers telling Schwartz that they would meet again, if necessary. Schwartz remembers Wilkinson telling him they could continue discussion of the wage issue by telephone.

On June 26, in writing, the Respondent gave the Union its counter proposal on wages for warehouse employees, which included proposed increases, retroactive to June 1. [6]The Respondent requested the Union's approval to implement the increases and asked for response from the Union as soon as possible. The letter also stated that the Respondent was evaluating the Union's wage proposal for drivers.

Thereafter, a few days before July 16, Schwartz received a telephone call from Ron Petronella asking when the Respondent would be making a response to the Union's wage proposal. Schwartz asked when the Union would respond to his June 26 letter. Petronella told Schwartz he was not aware of Respondent's request so Schwartz faxed him a copy of the June 26 letter.

By letter to Wilkinson dated July 16, Schwartz acknowledged receiving a telephone message from Wilkinson. The letter goes on to state that Respondent would respond to the Union's wage proposal on July 18 and asks the Union for a response to the Respondent's letter of June 26. It also notes that Respondent is unable to meet to negotiate on July 21 or 22 as evidently proposed in Wilkinson's phone message. Schwartz testified that this letter was dictated to his secretary while he was out of his office. He was unable to confer with Respondent and thus did not know what would be a good date. He testified that he was not able to meet on July 21 or 22 because of long term commitments he had made on those dates.

Wilkinson replied with a letter dated July 17, in which the Union states that the wage increases noted in Respondent's June 26 letter could be implemented, but that these increases would be in addition to, not in lieu of, wages negotiated between the parties. The letter also proposes meeting on July 22-25.

Schwartz wrote to Wilkinson on July 22, stating that Respondent was offering an additional 50 cents per hour wage increase upon ratification of an initial contract, and an additional 50 cents per hour on the anniversary date of the contract. Schwartz stated that he was unable to meet on the July dates proposed by Wilkinson because of scheduling conflicts. He noted that he was going on vacation from August 7 to August 17, and suggested the date of

[6] The Respondent traditionally gave performance evaluations and wage increases in June.

August 19 for the next meeting. Schwartz added that another meeting might not be necessary if Wilkinson were willing to submit for ratification the last proposal from Respondent together with the contract items already agreed upon. He further stated that he was willing to continue discussions with Wilkinson outside the formal bargaining sessions. He then urged the Union to accept the economic package as proposed by Respondent.

Wilkinson testified that he did not take the Respondent's proposals to the membership for ratification because there were still open issues. By letter dated August 8, Wilkinson confirmed that the Union was available to meet in a negotiating session on August 19.

On August 18, upon his return from vacation, Schwartz learned from Respondent that it had received a petition from a majority of its Unit employees stating that they no longer wanted Union representation. That same day, he wrote Wilkinson notifying him that recognition was being withdrawn based upon a decertification petition signed by a majority of the Unit employees. The letter goes on to state that Respondent will not meet with the Union on August 19.

Wilkinson testified that Respondent never complained that the Union was slow in submitting its economic proposal and the Respondent never accused the Union of wasting time. However, he admitted that Schwartz had asked the Union for its economic proposal on a number of occasions prior to June 18. Wilkinson testified that it was not, in his experience, normal procedure to meet just once a month to reach an initial collective bargaining agreement. Schwartz testified that the Union never expressed frustration with the pace of bargaining prior to the filing of an unfair labor practice charge on July 21.

On cross-examination, Wilkinson said that the Union had not submitted an economic proposal until June 18, because there were other outstanding issues. He testified that this is the Union's normal negotiating procedure. As of June 18, the Union had not made proposal on health insurance. The Respondent had offered a 401 K plan as its pension proposal and had indicated its unwillingness to participate in the Union's pension plan.

General Counsel's case with regard to bad faith bargaining on the part of Respondent is based on his assertion that Respondent engaged in dilatory bargaining with the Union only meeting once a month. I completely disagree. If the pace of bargaining was slow, the Union was as much at fault as the Respondent. At the first session held in October 2002, the matter of meeting on consecutive days or on weekends was raised by the Union. Respondent, through counsel, indicated that it was willing to meet on weekends if sufficient advance notice was given.[7] It is unrebutted in the record that this is the agreement made between the parties. Respondent's labor counsel had to fly to Connecticut to engage in bargaining and otherwise had a busy schedule. The Union never tested Respondent's good faith in this regard. Based on the credible evidence, the first time the Union ever asked to meet on more than a single day in a month is contained in Wilkinson's May 12 letter to Schwartz. This request and the two that followed asked to meet on consecutive weekdays, not weekends. Further, these requests were made on short notice in each instance.

[7] As noted earlier, Respondent's counsel was not willing to bargain on consecutive weekdays because the Union's negotiating team had some employees as members and they could only meet in the evenings. Thus, Respondent's counsel would be forced to waste whole days to meet for a couple of hours in the evening. I believe Schwartz's position on meeting on consecutive days was reasonable under the circumstances.

Respondent did cancel one bargaining session, that of February 15. It is undisputed in this record that Schwartz's wife was being treated for cancer during this time frame. That a husband would choose to be at his wife's side as such a critical time rather than attend a bargaining session in another state is totally understandable. To call that choice a dilatory tactic is absurd. The Union cancelled the April 15 meeting because it had not yet prepared an economic proposal and it objected to Respondent's refusal to accept dues check off. This does strike me as dilatory. Though Respondent asked for the Union's economic proposal and health care proposal from the outset of negotiations, the first time an economic proposal was made by the Union was at the June 18 meeting. The June 18 meeting was the eighth meeting between the parties over an eight-month period. The Union never made a proposal on health insurance. One could rationally ask how meeting on weekends or on consecutive days prior to June 18 would have speeded negotiations if the Union could not formulate an economic proposal, perhaps the most critical element of a collective bargaining agreement. No reason was given for the delay by the Union in formulating an economic proposal other than the Union just wanted to do it that way.

In all other aspects of the negotiations, Respondent acted reasonably. Respondent timely responded to all information requests made by the Union. It provided certain information prior to meetings so the Union would be familiar with it when they met. It consulted with the Union before making any changes in employees' terms and conditions of employment. To the Union's chagrin, Respondent took the position on dues check off that if instituted, the Union would have to pay the costs associated with dues check off and supplied the Union the amount of the costs. The Union filed an unfair labor practice charge over this issue. It subsequently withdrew the charge.

By the date of the June 18, meeting, the only really significant outstanding issues on which the parties had not already agreed, or had stated positions, were economics and health insurance. As noted, these were the issues the Union had failed to address over eight months of negotiations. I believe the record supports and I find that the fault with the progress of negotiations lies with the Union, not the Respondent.

The Board examines the totality of circumstances with failure to bargain claims. *Eltec Corp.,* 286 NLRB 890 (1987). Relevant factors to be analyzed include unreasonable bargaining demands, delaying tactics, unilateral changes in mandatory subjects of bargaining, efforts to bypass the Union, failure to designate an agent with sufficient bargaining authority, withdrawal of already agreed upon provisions; arbitrary scheduling of meetings, failure to provide relevant information and conduct away from the bargaining table. *Hartz Mountain Corp.,* 295 NLRB 418, 426 (1989). To begin with, it is undisputed that the parties met eight times over eight months. They could have met nine times had the Union not cancelled the April 15 meeting for less than compelling reasons. Similar bargaining schedules have been found to be evidence of good faith bargaining. *Beverly Enterprises,* 310 NLRB 222, 238 (1993) (Company and Union met 10 or 11 times in 11 months: "They met in every month but March due to Respondent's inability to meet caused by their chief negotiator having been in a serious accident. This does not constitute a failure by Respondent to bargain in good faith); *Boaz Carpet Yarns, Inc.,* 280 NLRB 40 (1986) (No violation where parties met, conferred, or exchanged information on 13 occasions in 12 months, despite the fact company took hard stand on issues.) Regardless, Wilkinson admitted that it was unnecessary for the parties to have met more frequently than they did. In that regard, when asked how many additional meetings he thought it would have taken to finish the contract, Wilkinson responded: "…it could have been handled in probably one meeting." That one meeting may have taken place months earlier had the Union been dilatory in coming forth with its economic and health insurance proposals. When the June 18 meeting ended, the parties

agreed that a further meeting might not be necessary, as the chief negotiators had been discussing issues by telephone away from the table.

In conclusion I find the Respondent did not in any way engage in dilatory tactics and, on the contrary, bargained in good faith. I will recommend the Complaint be dismissed in this regard.

C. Did Respondent's Supervisory Conduct Taint Its Withdrawal of Recognition?

Richard Candido was employed by Respondent at its North Haven facility from February 2, 2001, until his termination in October. He began work with Mason as a truck driver and was promoted to supervisor in June of 2002. Candido's supervisor was Carl Champney and Champney's supervisor was Branch Manager David Jaffe. At the end of July or the beginning of August, Candido was transferred to another of Respondent's facilities. While a supervisor at the North Haven facility, Candido supervised four drivers. Candido also performed driver's duties.

Candido attended management meetings during the Union campaign that resulted in the Union being certified as the unit's bargaining representative. He testified that the Respondent did not want the Union.

On June 10, Candido and Distribution Manager Frank Amarault helped Jaffe move into his apartment in Westport, CT.[8] When they finished, the three men had dinner at a local restaurant. According to Candido, he asked Jaffe how things were going with the Union. Jaffe told him not to worry about it. Candido then testified that he told Jaffe that one of Respondent's employees, Bill Kovacs, had told him that he was getting a petition from Jaffe. Candido added that the petition was to get the Union out and that Kovacs was to get the other employees to sign it. According to Candido, Jaffe said "yeah" and starting laughing. Candido testified that Kovacs had told him that he was going to be the main guy to make the Union go "bye-bye."

Jaffe confirmed that this dinner took placed, but denied that any mention of the Union came up during dinner. He similarly denied that any mention of Kovacs or a petition came up. Jaffe denied that he have ever given Kovacs a petition. Frank Amarault testified and corroborated Jaffe's testimony about the June dinner.

Candido testified that in early September, he visited the North Haven facility to see Kovacs. According to Candido, Kovacs told him Jaffe had given him the petition, that he had gotten other employees to sign it and the Union was going away. Candido noted that Kovacs had been given a new job building office furniture rather than driving a truck as he had in the past. Candido testified that drivers work 10 to 12 hours a day and have to load and unload their trucks. He believed that Kovacs worked 8 to 10 hours a day building furniture. Jaffe testified that Mason posted the position for building furniture and Kovacs was the only employee who responded. Kovacs' pay did not change.[9] Kovacs remained in the job for three months until he

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[8] Candido remembered the move occurring in July. However Jaffe remembered the date specifically as June 10 with credible reasons given.

[9] Kovacs' personnel documents show he was making $12.00 per hour as of March 2001. As some point, probably in 2002, his hourly wage increased to $15.85. In September 2003, his wage increased to $17.85. Jaffe testified that Kovacs has received regular raises based on performance and longevity. He further testified that Kovacs' wages are in line with other

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responded to an opening for an office supply driver. Another employee then took over Kovacs' furniture building position.

Kovacs testified, as pertinent, that he was involved with the petition to decertify the Union. He testified that he put together the wording for the petition on his home computer. According to Kovacs, he has been in three unions in previously held jobs. He testified that he learned from one of those unions about the filing of a decertification petition. He then told his supervisors what he was doing, adding he received no help or assistance from management. In this regard, he testified that Jaffe told him: "This is what you want to do? That's up to you. We can't influence you one way or the other, say yes or say no." Amarault told him the same thing. Kovacs then circulated the petition among employees outside of working hours. Kovacs denied ever having the conversation with Candido as described by Candido above.

Candido volunteered the testimony he gave to the Board after his termination by Respondent. He noted that Jaffe was the person who decided to terminate him and was the person who informed him of the termination. At the time of the termination, Candido lost his temper and challenged Jaffe to a fistfight, as he believed the termination to be unfair. Jaffe testified that at the time of the termination present were Candido, Jaffe and Mason's Human Resource Manager Regina Pruhenski. Jaffe testified that when informed of the termination and the reasons for termination, Candido became angry and said "Fuck you Jaffe, why are you doing this to me?" According to Jaffe, Candido left the office, slammed the door and walked down a hallway swearing. Jaffe followed him and encouraged him to just leave. Candido responded by saying, "This isn't over, why don't you come outside." Candido then said, "Fuck you, this isn't the last you heard of me. I'm going to get you." Candido then smashed his Company supplied radio and then left.

I credit the testimony of Kovacs, Jaffe and Amarault over that of Candido. In the absence on any credible evidence from anyone but Candido to support his assertions, I find that Candido is a disgruntled terminated employee who is trying to "get" Respondent. Thus, in the absence of any credible evidence of supervisory involvement in the petition, I find that Respondent lawfully withdrew recognition from the Union. Accordingly, I will recommend the Complaint be dismissed in this regard.

Conclusions of Law

1. Respondent, W.B. Mason Company, Inc., is an employer within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union, Local 371 United Food & Commercial Worker's Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not commit any of the unfair labor practices alleged in the Complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the

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employees. General Counsel did not submit comprehensive payroll information on employees holding positions similar to that held by Kovacs. Thus, there is nothing to rebut Jaffe's assertions.

following recommended[10]

ORDER

The complaint is dismissed.

Dated, Washington, D.C.

Wallace H. Nations
Administrative Law Judge

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.